CLERK'S OFFICE U.S. DIST. COURT AT ABINGDON, VA

MAY 17 2006

## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA **BIG STONE GAP DIVISION**

SY:	OEPUTY CLERK	/
700038	3	

VINCENT J. TOMLINSON, Case No. 2:05CV Plaintiff, **OPINION** V. By: James P. Jones Chief United States District Judge JO ANNE B. BARNHART, **COMMISSIONER OF SOCIAL** SECURITY. Defendant.

The plaintiff has filed timely objections to the report and recommendation of the magistrate judge in this Social Security case. After a de novo review, and for the reasons stated by the magistrate judge, I find that the Commissioner's determination that the plaintiff is not disabled within the meaning of the Social Security Act is supported by substantial evidence. The administrative law judge properly considered the opinion of the psychiatrist, Dr. Nelson, who gave opinion on behalf of the plaintiff, and the ALJ's ultimate rejection of that opinion was within the ALJ's authority.

The plaintiff also complains that the administrative record does not contain Dr. Nelson's complete medical records and that therefore the case ought to be remanded to the Commissioner for further proceedings.

It is correct that the present administrative record appears to be missing two pages of a five-page interpretative report of a Minnesota Multiphasic Personality Inventory ("MMPI-2") psychological assessment performed on the plaintiff in 1999. (R. at 252-54.) The ALJ's

written opinion expressly states that the ALJ reviewed the report (R. at 17), so it may be

presumed that the original record was complete, particularly since the report itself was

supplied by the plaintiff's counsel. While normally effective review by this court of an

administrative decision requires a complete record, in the present case this error is harmless.

In the first place, the plaintiff does not contend that the two missing pages contain any

information that bears on the correctness of the administrative decision. The MMPI-2 is a

written test widely used to screen for personality disorders, see United States v. Thomas, No.

Crim. CCB-03-0150, 2006 WL 140558, at \*13 (D. Md. Jan. 13, 2006), and the pages of the

interpretative report that are in the record contain the report's "Diagnostic Considerations"

and "Treatment Considerations" sections, which are the meat of the report. Moreover, the

record contains Dr. Nelson's Psychiatric Review Technique, in which he sets forth his

opinion as to the plaintiff's mental condition. Under these circumstances, this court is able

to adequately review the administrative decision, in spite of the two missing pages.

For these reasons, the magistrate judge's report and recommendation will be accepted.

A separate judgment consistent with this opinion will be entered forthwith.

DATED: May 17, 2006

man Don

Chief/United States District Judg

-2-